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CLERK OF DISTRICT COURT

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH HELGESON,

Defendant.

No. CR-07-110-GF-SEH

**ORDER**

On May 3, 2010, Defendant/Movant Kenneth Helgeson ("Helgeson"), a federal prisoner proceeding pro se, moved to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. On June 29, 2010, the motion and a certificate of appealability were denied. He did not appeal.

On November 22, 2010, Helgeson moved under Fed. R. Civ. P. 12(b)(1) and (3) and 60(b)(4) to set aside the judgment denying the § 2255 motion on the grounds that the Court lacked jurisdiction to consider it. The Court plainly has jurisdiction to entertain a § 2255 motion from a federal prisoner. See 28 U.S.C. § 2255(a). To the

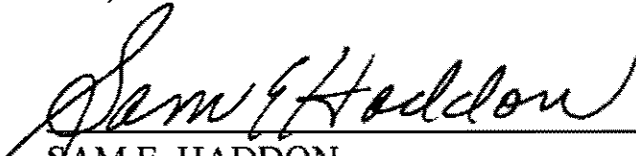
extent Helgeson now argues that the Court lacked jurisdiction in the criminal action, hearing his claim under Fed. R. Civ. P. 60(b) would conflict with restrictions on second or successive motions under 28 U.S.C. § 2255(h). See Gonzalez v. Crosby, 545 U.S. 524, 531 (2005). Any jurisdictional claim lacks merit in any case because jurisdiction plainly existed. See 18 U.S.C. §§ 1153(a), 1112(a).

“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see also Hohn v. United States, 524 U.S. 236, 240 (1998); Lambright v. Stewart, 220 F.3d 1022, 1024 (9th Cir. 2000). Helgeson has not made that showing. Nor does he show any reason to set aside the denial of his § 2255 motion. A certificate of appealability is not warranted.

ORDERED:

Helgeson’s motion to set aside the judgment denying the § 2255 motion (doc. 88) is DENIED. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Helgeson files a Notice of Appeal.

DATED this 14<sup>th</sup> day of December, 2010.

  
SAM E. HADDON  
United States District Judge